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CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation,

Plaintiff,

vs.

MASONITE CORPORATION, a
corporation; SIERRA LUMBER
MANUFACTURERS, a corporation,

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA"), a California non-profit association, by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to

1 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further
2 necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and
3 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

4 2. On May 23, 2016, Plaintiff provided notice of Defendant Masonite Corporation's
5 violations of the Act, and of Plaintiff's intention to file suit against Defendant Masonite Corporation,
6 to the Administrator of the United States Environmental Protection Agency ("EPA"); the
7 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control
8 Board ("State Board"); the Executive Officer of the California Regional Water Quality Control
9 Board, Central Valley Region ("Regional Board"); and to Defendant Masonite Corporation, as
10 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's notice letter to
11 Defendant Masonite Corporation is attached as Exhibit A, and is incorporated by reference.

12 3. On May 23, 2016, Plaintiff provided notice of Defendant Sierra Lumber
13 Manufacturers' violations of the Act, and of Plaintiff's intention to file suit against Defendant Sierra
14 Lumber Manufacturers, to the Administrator of EPA; the Administrator of EPA Region IX; the
15 Executive Director of the State Board; the Executive Officer of the Regional Board; and to
16 Defendant Sierra Lumber Manufacturers, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true
17 and correct copy of CSPA's notice letter to Defendant Sierra Lumber Manufacturers is attached as
18 Exhibit B, and is incorporated by reference.

19 4. More than sixty days have passed since notices were served on Defendants and the
20 State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the
21 EPA nor the State of California has commenced or is diligently prosecuting a court action to redress
22 the violations alleged in this complaint. This action's claim for civil penalties is not barred by any
23 prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

24 5. Venue is proper in the Eastern District of California pursuant to Section 505(c)(1) of
25 the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial
26 district. Pursuant to Local Rule 3-120, intradistrict venue is proper in Sacramento, California,
27 because the source of the violations is located within San Joaquin County.
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II. INTRODUCTION

6. This complaint seeks relief for Defendants' discharges of polluted storm water from Defendant Masonite Corporation's industrial facility located at 435 W. Scotts Avenue in Stockton, California ("Masonite Facility") and from Defendant Sierra Lumber Manufacturers' industrial facility located at 375 Hazelton Avenue in Stockton, California ("Sierra Lumber Facility") in violation of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ ("1997 Permit"), as renewed by Water Quality Order No. 2014-0057-DWQ ("2015 Permit") (the permits are collectively referred to hereinafter as the "Permit" or "General Permit"). Defendants' violations of the discharge, treatment technology, monitoring requirements, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.

III. PARTIES

7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate and work in and around waters of the State of California, including the San Joaquin River. CSPA is dedicated to the preservation, protection, and defense of the environment, the wildlife and the natural resources of all waters of California. To further these goals, CSPA actively seeks federal and state agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf of itself and its members. CSPA brings this action on behalf of its members. CSPA's interest in reducing Defendants' discharges of pollutants into the San Joaquin River and its tributaries and requiring Defendants to comply with the requirements of the General Permit are germane to its purposes. Litigation of the claims asserted and relief requested in this Complaint does not require the participation in this lawsuit of individual members of CSPA.

8. Members of CSPA reside in and around Mormon Slough, the Stockton Deep Water Ship Channel, the San Joaquin River, and the Sacramento-San Joaquin Delta and enjoy using those waters for recreation and other activities. One or more members of CSPA use and enjoy the waters

1 into which Defendants have caused, are causing, and will continue to cause, pollutants to be
2 discharged. One or more members of CSPA use those areas to fish, sail, boat, kayak, swim, bird
3 watch, view wildlife and engage in scientific study including monitoring activities, among other
4 things. Defendants' discharges of pollutants threaten or impair each of those uses or contribute to
5 such threats and impairments. Thus, the interests of one or more of CSPA's members have been, are
6 being, and will continue to be adversely affected by Defendants' failure to comply with the Clean
7 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused by
8 Defendants' activities.

9 9. Continuing commission of the acts and omissions alleged above will irreparably harm
10 Plaintiff and one or more of its members, for which harm they have no plain, speedy or adequate
11 remedy at law.

12 10. Defendant MASONITE CORPORATION ("Masonite") is a corporation that operates
13 the Masonite Facility that is at issue in this action.

14 11. Defendant SIERRA LUMBER MANUFACTURERS ("Sierra Lumber") is a
15 corporation that operates the Sierra Lumber Facility that is at issue in this action. Sierra Lumber is a
16 wholly owned subsidiary of Masonite.

17 **IV. STATUTORY BACKGROUND**

18 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
19 pollutant into waters of the United States, unless such discharge is in compliance with various
20 enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not
21 authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of
22 the Act, 33 U.S.C. § 1342.

23 13. Section 402(p) of the Act establishes a framework for regulating municipal and
24 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with
25 approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm
26 water discharges through individual permits issued to dischargers or through the issuance of a single,
27 statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

1 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the U.S.
2 EPA has authorized California's State Board to issue NPDES permits including general NPDES
3 permits in California.

4 **General Permit**

5 15. The State Board elected to issue a statewide general permit for industrial storm water
6 discharges. The State Board originally issued the General Permit on or about November 19, 1991.
7 The State Board modified the General Permit on or about September 17, 1992. Pertinent to this
8 action, the State Board reissued the General Permit on or about April 17, 1997 (the "1997 Permit"),
9 and again on or about April 1, 2014 (the "2015 Permit"), pursuant to Section 402(p) of the Clean
10 Water Act, 33 U.S.C. § 1342(p). The 1997 Permit was in effect between 1997 and June 30, 2015.
11 The 2015 Permit went into effect on July 1, 2015. The 2015 Permit maintains or makes more
12 stringent the same requirements as the 1997 Permit.

13 16. In order to discharge storm water lawfully in California, industrial dischargers must
14 comply with the terms of the General Permit or have obtained and complied with an individual
15 NPDES permit. 33 U.S.C. § 1311(a).

16 17. The General Permit contains several prohibitions. Effluent Limitation B(3) of the
17 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require dischargers to reduce or
18 prevent pollutants in their storm water discharges through implementation of the Best Available
19 Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and the
20 Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. Discharge
21 Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit
22 storm water discharges and authorized non-storm water discharges that cause or threaten to cause
23 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the 1997 Permit and
24 Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges to any surface
25 or ground water that adversely impact human health or the environment. Receiving Water
26 Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge
27 Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or contribute to an
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1 exceedance of any applicable water quality standards contained in Statewide Water Quality Control
2 Plan or the applicable Regional Board's Basin Plan.

3 18. In addition to absolute prohibitions, the General Permit contains a variety of
4 substantive and procedural requirements that dischargers must meet. Facilities discharging, or
5 having the potential to discharge, storm water associated with industrial activity that have not
6 obtained an individual NPDES permit must apply for coverage under the State's General Permit by
7 filing a Notice of Intent to Comply ("NOI"). Dischargers have been required to file NOIs since
8 March 30, 1992.

9 19. Dischargers must develop and implement a Storm Water Pollution Prevention Plan
10 ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply
11 with the BAT and BCT standards. The General Permit requires that an initial SWPPP has been
12 developed and implemented before October 1, 1992. The objective of the SWPPP requirement is to
13 identify and evaluate sources of pollutants associated with industrial activities that may affect the
14 quality of storm water discharges and authorized non-stormwater discharges from the facility, and to
15 implement best management practices ("BMPs") to reduce or prevent pollutants associated with
16 industrial activities in storm water discharges and authorized non-storm water discharges. *See* 1997
17 Permit, § A(2); 2015 Permit, § X(C). These BMPs must achieve compliance with the General
18 Permit's effluent limitations and receiving water limitations, including the BAT and BCT
19 technology mandates. To ensure compliance with the General Permit, the SWPPP must be
20 evaluated and revised as necessary. 1997 Permit, §§ A(9), (10); 2015 Permit, § X(B). Failure to
21 develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a
22 violation of the General Permit. 2015 Permit, Fact Sheet § I(1).

23 20. Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP.
24 Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list
25 of significant materials handled and stored at the site; a description of potential pollutant sources; an
26 assessment of potential pollutant sources; and a description of the BMPs to be implemented at the
27 facility that will reduce or prevent pollutants in storm water discharges and authorized non-
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1 stormwater discharges, including structural BMPs where non-structural BMPs are not effective.
2 Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the
3 1997 Permit, except that all dischargers are now required to develop and implement a set of
4 minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as
5 the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving
6 water limitations. See 2015 Permit, § X(H). The 2015 Permit further requires a more
7 comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP
8 descriptions; and an additional BMP summary table identifying each identified area of industrial
9 activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being
10 implemented. See 2015 Permit, §§ X(G)(2), (4), (5).

11 21. The 2015 Permit requires dischargers to implement and maintain, to the extent
12 feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial
13 storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and
14 response, material handling and waste management, erosion and sediment controls, an employee
15 training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to
16 implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit, Fact
17 Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the
18 extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent
19 discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm
20 water containment and discharge reduction BMPs, treatment control BMPs, and other advanced
21 BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve
22 compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.*
23 The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary
24 Table. See 2015 Permit, § X(H)(4), (5).

25 22. The General Permit requires dischargers to develop and implement an adequate
26 written Monitoring and Reporting Program. The primary objective of the Monitoring and Reporting
27 Program is to detect and measure the concentrations of pollutants in a facility's discharge to ensure
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1 compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving
2 water limitations. As part of their monitoring program, dischargers must identify all storm water
3 discharge locations that produce a significant storm water discharge, evaluate the effectiveness of
4 BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the
5 SWPPP are adequate and properly implemented. The 1997 Permit required dischargers to collect
6 storm water samples during the first hour of discharge from the first storm event of the wet season,
7 and at least one other storm event during the wet season, from all storm water discharge locations at
8 a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample
9 *four* (rather than two) storm water discharges from all discharge locations over the course of the
10 reporting year. *See* 2015 Permit, §§ XI(B)(2), (3).

11 23. Facilities are required to make monthly visual observations of storm water
12 discharges. The visual observations must represent the quality and quantity of the facility's storm
13 water discharges from the storm event. 1997 Permit, § B(7); 2015 Permit, § XI.A.

14 24. Section XI(B)(2) of the 2015 Permit requires that dischargers collect and analyze
15 storm water samples from two qualifying storm events ("QSEs") during the first half of each
16 reporting year (July 1 to December 31) and two QSEs during the second half of each reporting year
17 (January 1 to June 30).

18 25. Under the 1997 Permit, facilities must analyze storm water samples for "toxic
19 chemicals and other pollutants that are likely to be present in storm water discharges in significant
20 quantities." 1997 Permit, § B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water
21 samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that
22 serve as indicators of the presence of all industrial pollutants identified in the pollutant source
23 assessment." 2015 Permit, § XI(B)(6)(c).

24 26. Section B(14) of the 1997 Permit requires dischargers to include laboratory reports
25 with their Annual Reports submitted to the Regional Board. This requirement is continued with the
26 2015 Permit. Fact Sheet, Paragraph O.

27 27. The 1997 Permit, in relevant part, requires that the Annual Report include an Annual
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1 Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, § B(14). As
 2 part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to
 3 determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report
 4 must be signed and certified by a duly authorized representative, under penalty of law that the
 5 information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015
 6 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation
 7 ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional
 8 BMPs based on visual observations and sampling and analysis results. *See* 2015 Permit, § XV.

9 28. The General Permit does not provide for any mixing zones by dischargers. The
 10 General Permit does not provide for any receiving water dilution credits to be applied by
 11 dischargers.

12 **Basin Plan**

13 29. The Regional Board has identified beneficial uses of the Central Valley Region's
 14 waters and established water quality standards for the San Joaquin River and its tributaries and the
 15 Sacramento-San Joaquin Delta in "The Water Quality Control Plan (Basin Plan) for the California
 16 Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and
 17 The San Joaquin River Basin," generally referred to as the Basin Plan and the "Water Quality
 18 Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary."

19 30. The beneficial uses of these waters include, among others, domestic and municipal
 20 supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold
 21 freshwater habitat, and fish spawning. The non-contact water recreation use is defined as "[u]ses of
 22 water for recreational activities involving proximity to water, but where there is generally no body
 23 contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited
 24 to, picnicking, sunbathing, hiking, camping, boating. . . hunting, sightseeing, or aesthetic enjoyment
 25 in conjunction with the above activities."

26 31. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters
 27 shall be maintained free of toxic substances in concentrations that produce detrimental physiological
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1 responses in human, plant, animal, or aquatic life.”

2 32. The Basin Plan provides that “[w]ater shall not contain floating material in amounts
3 that cause nuisance or adversely affect beneficial uses.”

4 33. The Basin Plan provides that “[w]ater shall be free of discoloration that causes
5 nuisance or adversely affects beneficial uses.”

6 34. The Basin Plan provides that “[w]aters shall not contain suspended materials in
7 concentrations that cause nuisance or adversely affect beneficial uses.”

8 35. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters
9 shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result
10 in a visible film or coating on the surface of the water or on objects in the water, or otherwise
11 adversely affect beneficial uses.”

12 36. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised
13 above 8.5.

14 37. The Basin Plan requires that “[w]aters shall be free of changes in turbidity that cause
15 nuisance or adversely affect beneficial uses.”

16 38. Table III-1 of the Basin Plan provides a water quality objective (“WQO”) for iron of
17 0.3 mg/L and for zinc of 0.1 mg/L.

18 39. The California Toxics Rule (California Enclosed Bays & Estuaries) sets a freshwater
19 numeric water quality standard for zinc of 0.12 mg/L (Criteria Maximum Concentration – “CMC”)
20 at a hardness of 100 mg/L CaCO_3 .

21 40. EPA has established Parameter Benchmark Values as guidelines for determining
22 whether a facility discharging industrial storm water has implemented the requisite BAT and BCT.
23 These benchmarks represent pollutant concentrations at which a storm water discharge could
24 potentially impair, or contribute to impairing, water quality, or affect human health from ingestion of
25 water or fish. The following EPA benchmarks have been established for pollution parameters
26 applicable to the facilities at issue in this action: pH – 6.0 - 9.0 standard units (“s.u.”); total
27 suspended solids (“TSS”) – 100 mg/L; oil & grease (“O&G”) – 15 mg/L; iron – 1.0 mg/L; zinc –
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1 0.26 mg/L; and chemical oxygen demand ("COD") – 120 mg/L.

2 41. These benchmarks are reflected in the 2015 Permit in the form of Numeric Action
3 Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 MSGP
4 benchmark values, and instantaneous maximum NALs, which are derived from a Water Board
5 dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L;
6 iron – 1.0 mg/L; zinc – 0.26 mg/L; O&G – 15 mg/L; and COD – 120 mg/L. An exceedance of
7 annual NALs occurs when the average of all samples obtained for an entire facility during a single
8 reporting year is greater than a particular annual NAL. The reporting year runs from July 1 to June
9 30. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0
10 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L. An instantaneous maximum NAL exceedance occurs
11 when two or more analytical results from samples taken for any single parameter within a reporting
12 year exceed the instantaneous maximum NAL value (for TSS and O&G) or are outside of the
13 instantaneous maximum NAL range for pH. When a discharger exceeds an applicable NAL, it is
14 elevated to "Level 1 Status," which requires a revision of the SWPPP and additional BMPs. If a
15 discharger exceeds an applicable NAL during Level 1 Status, it is then elevated to "Level 2 Status."
16 For Level 2 Status, a discharger is required to submit an Action Plan requiring a demonstration of
17 either additional BMPs to prevent exceedances, a determination that the exceedance is solely due to
18 non-industrial pollutant sources, or a determination that the exceedance is solely due to the presence
19 of the pollutant in the natural background.

20 42. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement
21 actions against any "person," including individuals, corporations, or partnerships, for violations of
22 NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive
23 relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an
24 assessment of civil penalties of up to \$37,500 per day per violation, pursuant to Sections 309(d) and
25 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

26 **V. STATEMENT OF FACTS**

27 **Violations at Masonite Facility**

1 43. Defendant Masonite owns and/or operates the Masonite Facility, a 350,399 square-
2 foot industrial site located within the City of Stockton.

3 44. The Masonite Facility falls within Standard Industrial Classification ("SIC") Code
4 2431 ("millwork").

5 45. Based on CSPA's investigation, including a review of the Masonite Facility's Notice
6 of Intent to Comply with the Terms of the Industrial General Permit ("NOI"), SWPPP, aerial
7 photography, and CSPA's information and belief, storm water is collected and discharged from the
8 Masonite Facility through a series of channels that discharge via at least four outfalls. The outfalls
9 discharge to channels that flow into the City of Stockton's Municipal Separate Storm Sewer System
10 ("MS4"), which discharges to Mormon Slough, which flows into the Stockton Deep Water Ship
11 Channel ("DWSC") and then into the San Joaquin River, all of which also comprise portions of the
12 Sacramento-San Joaquin Delta ("Delta").

13 46. Plaintiff is informed and believes, and thereupon alleges that the storm water flows
14 over the surface of the Masonite Facility's industrial features, collecting suspended sediment, dirt,
15 metals, and other pollutants as it flows towards the storm water channels. Storm water and any
16 pollutants contained in that storm water at the Masonite Facility and is ultimately discharged by the
17 Masonite Facility to channels that flow to the City of Stockton's MS4, which discharges to Mormon
18 Slough, which flows into the DWSC and then into the San Joaquin River.

19 47. On information and belief, Plaintiff alleges that the majority of storm water
20 discharges from the Masonite Facility contain storm water that is commingled with runoff from
21 areas at the Masonite Facility where industrial processes occur.

22 48. Plaintiff is informed and believes, and thereupon alleges, that the management
23 practices at the Masonite Facility are currently inadequate to prevent the sources of contamination
24 described above from causing the discharge of pollutants to waters of the United States. The
25 Masonite Facility lacks sufficient structural controls such as grading, berming, roofing, containment,
26 or drainage structures to prevent rainfall and storm water flows from coming into contact with
27 exposed areas of contaminants. The Masonite Facility lacks sufficient structural controls to prevent
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1 the discharge of water once contaminated. The Masonite Facility lacks adequate storm water
2 pollution treatment technologies to treat storm water once contaminated.

3 49. Since at least November 11, 2011, Masonite has taken samples or arranged for
4 samples to be taken of storm water discharges at the Masonite Facility. The sample results were
5 reported in the Masonite Facility's Annual Reports submitted to the Regional Board. Masonite
6 certified each of those Annual Reports pursuant to the General Permit.

7 50. In Annual Reports and storm water sampling results from the Masonite Facility
8 submitted to the Regional Board for the past five years, Masonite has consistently reported
9 extremely high pollutant levels from its storm water sampling results. Measurements of TSS from
10 the Masonite Facility have been particularly elevated, with readings *orders of magnitude* above
11 EPA's benchmark levels as well as the annual NALs for those pollutants.

12 51. Masonite has reported numerous discharges from the Masonite Facility in excess of
13 narrative and numeric water quality standards established in the Basin Plan. These observations
14 have thus violated narrative and numeric water quality standards established in the Basin Plan and
15 have thus violated Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the
16 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and
17 VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the
18 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

19 52. Masonite has observed discharges from the Masonite Facility with conditions that
20 violate the narrative water quality standards for discoloration, turbidity, floating materials, sheen,
21 and suspended materials contained in the Basin Plan. Specific dates on which Masonite has
22 observed storm water discharges with such violations are contained in the Notice Letter attached as
23 Exhibit A.

24 53. The levels of TSS in storm water discharged from the Masonite Facility have
25 exceeded the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and the
26 State Board, respectively, and the instantaneous NAL value for TSS of 400 mg/L established by the
27 State Board. For example, on November 24, 2015, the level of TSS measured by Masonite at one of
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1 its outfalls was 7,430 mg/L. That level of TSS is over 70 times the benchmark value and annual
2 NAL for TSS. Specific dates on which Masonite has measured such exceedances, and the levels and
3 locations of such exceedances, are contained in the Notice Letter attached as Exhibit A.

4 54. The levels of iron in storm water discharged from the Masonite Facility have
5 exceeded the WQO established by the Basin Plan of 0.3 mg/L for iron. For example, on November
6 24, 2015, the level of iron measured from one of the Masonite Facility's storm water outfalls was
7 180 mg/L. That level of iron is 600 times the WQO for iron. Specific dates, levels, and location on
8 which Masonite has measured such exceedances of the WQO for iron are contained in the Notice
9 Letter attached as Exhibit A.

10 55. The levels of iron in storm water discharged from the Masonite Facility have
11 exceeded the benchmark value and annual NAL for iron of 1 mg/L established by EPA and the State
12 Board, respectively. For example, on November 24, 2015, the level of iron measured by Masonite at
13 its outfall was 180 mg/L. That level of iron is 180 times the benchmark value and annual NAL for
14 iron. Specific dates on which Masonite has measured such exceedances of iron, and the levels and
15 locations of such exceedances, are contained in the Notice Letter attached as Exhibit A.

16 56. The levels of pH in storm water discharged from the Masonite Facility have been
17 outside the acceptable range of 6.5 – 8.5 established by the Basin Plan for pH. For example, on
18 November 2, 2015, the level of pH measured from one of the Masonite Facility's storm water
19 outfalls was 9.27. Specific dates, levels, and location on which Masonite has measured such levels
20 of pH outside of the established range are contained in the Notice Letter attached as Exhibit A.

21 57. The levels of pH in storm water discharged from the Masonite Facility has exceeded
22 the benchmark value and instantaneous NAL for pH of 6.0 – 6.0, established by EPA and the State
23 Board, respectively. On November 2, 2015, the level of pH measured by Masonite at one of its
24 outfalls was 9.27.

25 58. The level of O&G in storm water discharged from the Masonite Facility has exceeded
26 the benchmark value and annual NAL for O&G of 15 mg/L established by EPA and the State Board,
27 respectively. In addition, the level has exceeded the instantaneous NAL for O&G of 25 mg/L. On
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1 November 2, 2015, the level of O&G measured by Masonite at one of its outfalls was 29 mg/L.

2 59. The levels of COD in storm water discharged from the Masonite Facility have
3 exceeded the benchmark value and annual NAL for COD of 120 mg/L established by EPA and the
4 State Board, respectively. For example, on November 24, 2015, the level of iron measured by
5 Masonite at its outfall was 1,600 mg/L. That level of COD is over 13 times the benchmark value
6 and annual NAL for COD. The level of COD has been in excess of 120 mg/L nearly every time that
7 Masonite has analyzed its storm water discharges for it. Specific dates on which Masonite has
8 measured such exceedances of COD, and the levels and locations of such exceedances, are contained
9 in the Notice Letter attached as Exhibit A.

10 60. In its current SWPPP, Masonite indicates that the Masonite Facility has four storm
11 water discharge outfalls. However, on information and belief, CSPA alleges that during the 2011-
12 2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, the Masonite Facility only collected and
13 analyzed storm water discharges from one outfall at the Masonite Facility, and failed to collect and
14 analyze discharges from its other outfalls.

15 61. On information and belief, CSPA alleges that during the 2013-2014 wet season,
16 Masonite failed to collect and analyze storm water samples from a second storm event. On
17 information and belief, CSPA alleges that storm water discharges occurred at the Masonite Facility
18 on the following dates: November 19, 2013; December 6, 2013; February 26, 2014; and April 25,
19 2014.

20 62. On information and belief, CSPA alleges that Masonite failed to conduct monthly
21 visual observations of storm water discharges during numerous months during the past five years.
22 On information and belief, based on precipitation data compared to the dates in which the Masonite
23 Facility did conduct monthly visual observation of storm water discharges, CSPA alleges that
24 Masonite failed to conduct monthly visual observations of storm water discharges at Outfall 1 during
25 the following months: November 2013, December 2013, February 2014, and April 2014.

26 63. On information and belief, CSPA alleges that during the past five years, Masonite has
27 not performed any required monthly visual observations at any of its outfalls besides Outfall 1.
28

1 64. On information and belief, CSPA alleges that iron is a pollutant likely to be present in
2 Masonite's storm water discharges in significant quantities. CSPA alleges that with the exception of
3 three samples during the 2015-2016 reporting year, Masonite has never otherwise analyzed its storm
4 water discharges for iron.

5 65. On information and belief, CSPA alleges that Masonite has consistently failed to
6 comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit, by failing to
7 complete a proper ACSCE Report as well as an Annual Evaluation for the Masonite Facility.

8 66. On information and belief, Plaintiff alleges that since at least June 4, 2011, Masonite
9 has failed to implement BAT and BCT at the Masonite Facility for its discharges of pH, iron, TSS,
10 O&G, COD and other potentially un-monitored pollutants. Effluent Limitation B(3) of the 1997
11 Permit and Effluent Limitation V(A) of the 2015 Permit requires that Masonite implement BAT for
12 toxic and nonconventional pollutants and BCT for conventional pollutants by no later than October
13 1, 1992. As of the date of this Complaint, Masonite has failed to implement BAT and BCT.

14 67. On information and belief, Plaintiff alleges that since at least June 4, 2011, Masonite
15 has failed to implement an adequate SWPPP for the Masonite Facility. Plaintiff is informed and
16 believes, and thereupon alleges, that the SWPPP prepared for the Masonite Facility does not set forth
17 site-specific best management practices for the Masonite Facility that are consistent with BAT or
18 BCT for the Masonite Facility. Plaintiff is informed and believes, and thereupon alleges, that the
19 SWPPP prepared for the Masonite Facility does not comply with the requirements of Section
20 X(H)(2) of the 2015 Permit. The SWPPP also fails to identify and implement advanced BMPs that
21 are not being implemented at the Masonite Facility because they do not reflect best industry practice
22 considering BAT/BCT. According to information available to CSPA, Masonite's SWPPP has not
23 been evaluated to ensure its effectiveness and revised where necessary to further reduce pollutant
24 discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not
25 include each of the mandatory elements required by the General Permit.

26 68. Information available to CSPA indicates that as a result of these practices, Masonite
27 is discharging storm water containing excessive pollutants during rain events to the City of
28

1 Stockton's MS4, which discharges to Mormon Slough, which flows into the DWSC and then into
2 the San Joaquin River.

3 69. Plaintiff is informed and believes, and thereupon alleges, that Masonite has failed and
4 continues to fail to alter the Masonite Facility's SWPPP and site-specific BMPs consistent with the
5 General Permit.

6 70. Information available to Plaintiff indicates that Masonite has not fulfilled the
7 requirements set forth in the General Permit for discharges from the Masonite Facility due to the
8 continued discharge of contaminated storm water. Plaintiff is informed and believes, and thereupon
9 alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

10 **Violations at Sierra Lumber Facility**

11 71. Defendant Sierra Lumber owns and/or operates the Sierra Lumber Facility, a 7.6 acre
12 industrial site located within the City of Stockton.

13 72. The Sierra Lumber Facility falls within Standard Industrial Classification SIC Code
14 2431 ("millwork").

15 73. Based on CSPA's investigation, including a review of the Sierra Lumber Facility's
16 NOI, SWPPP, aerial photography, and CSPA's information and belief, storm water is collected and
17 discharged from the Sierra Lumber Facility through a series of channels that discharge via at least
18 four outfalls. The outfalls discharge to channels that flow into the City of Stockton's MS4, which
19 discharges to Mormon Slough, which flows into the DWSC and then into the San Joaquin River, all
20 of which also comprise portions of the Delta.

21 74. Plaintiff is informed and believes, and thereupon alleges that the storm water flows
22 over the surface of the Sierra Lumber Facility's industrial features, collecting suspended sediment,
23 dirt, metals, and other pollutants as it flows towards the storm water channels. Storm water and any
24 pollutants contained in that storm water at the Sierra Lumber Facility and is ultimately discharged by
25 the Sierra Lumber Facility to channels that flow to the City of Stockton's MS4, which discharges to
26 Mormon Slough, which flows into the DWSC and then into the San Joaquin River.

27 75. On information and belief, Plaintiff alleges that the majority of storm water
28

1 discharges from the Sierra Lumber Facility contain storm water that is commingled with runoff from
2 areas at the Sierra Lumber Facility where industrial processes occur.

3 76. Plaintiff is informed and believes, and thereupon alleges, that the management
4 practices at the Sierra Lumber Facility are currently inadequate to prevent the sources of
5 contamination described above from causing the discharge of pollutants to waters of the United
6 States. The Sierra Lumber Facility lacks sufficient structural controls such as grading, berming,
7 roofing, containment, or drainage structures to prevent rainfall and storm water flows from coming
8 into contact with exposed areas of contaminants. The Sierra Lumber Facility lacks sufficient
9 structural controls to prevent the discharge of water once contaminated. The Sierra Lumber Facility
10 lacks adequate storm water pollution treatment technologies to treat storm water once contaminated.

11 77. Since at least November 11, 2011, Sierra Lumber has taken samples or arranged for
12 samples to be taken of storm water discharges at the Sierra Lumber Facility. The sample results
13 were reported in the Sierra Lumber Facility's Annual Reports submitted to the Regional Board.
14 Sierra Lumber certified each of those Annual Reports pursuant to the General Permit.

15 78. In Annual Reports and storm water sampling results submitted to the Regional Board
16 for the past five years, Sierra Lumber has consistently reported high pollutant levels from its storm
17 water sampling results from the Sierra Lumber Facility.

18 79. Sierra Lumber has reported observations or measurements of numerous discharges
19 from the Sierra Lumber Facility with water quality in excess of narrative and numeric water quality
20 standards established in the Basin Plan. These observed or measured discharges have thus violated
21 narrative and numeric water quality standards established in the Basin Plan and have thus violated
22 Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit;
23 Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of the
24 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit
25 and Effluent Limitation V(A) of the 2015 Permit.

26 80. Sierra Lumber has observed discharges from the Sierra Lumber Facility with
27 conditions that violate the narrative water quality standards for discoloration, turbidity, floating
28

1 materials, and suspended materials contained in the Basin Plan. Specific dates on which Sierra
2 Lumber has observed storm water discharges with such violations are contained in the Notice Letter
3 attached as Exhibit B.

4 81. The levels of TSS in storm water discharged from the Sierra Lumber Facility have
5 exceeded the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and the
6 State Board, respectively. For example, on December 3, 2015, the level of TSS measured by Sierra
7 Lumber at one of its outfalls was 1,940 mg/L. That level of TSS is almost 20 times the benchmark
8 value and annual NAL for TSS. Specific dates on which Sierra Lumber has measured such
9 exceedances, and the levels and locations of such exceedances, are contained in the Notice Letter
10 attached as Exhibit B.

11 82. The levels of pH in storm water discharged from the Sierra Lumber Facility have
12 been outside the acceptable range of 6.5 – 8.5 established by the Basin Plan for pH. For example, on
13 November 24, 2015, the level of pH measured from one of the Sierra Lumber Facility's storm water
14 outfalls was 9.03. Specific dates, levels, and location on which Sierra Lumber has measured such
15 levels of pH outside of the established range are contained in the Notice Letter attached as Exhibit B.

16 83. The levels of pH in storm water discharged from the Sierra Lumber Facility has
17 exceeded the benchmark value and instantaneous NAL for pH of 6.0 – 6.0, established by EPA and
18 the State Board, respectively. On November 24, 2015, the level of pH measured by Sierra Lumber
19 at one of its outfalls was 9.03.

20 84. The levels of COD in storm water discharged from the Sierra Lumber Facility have
21 exceeded the benchmark value and annual NAL for COD of 120 mg/L established by EPA and the
22 State Board, respectively. For example, on March 4, 2016, the level of COD measured by Sierra
23 Lumber at its outfall was 220 mg/L. That level of COD is nearly twice the benchmark value and
24 annual NAL for COD. Specific dates on which Sierra Lumber has measured such exceedances of
25 COD, and the levels and locations of such exceedances, are contained in the Notice Letter attached
26 as Exhibit B.

27 85. On information and belief, CSPA alleges that during the 2013-2014 wet season,
28

1 Sierra Lumber failed to collect and analyze storm water samples from a second storm event. On
2 information and belief, CSPA alleges that storm water discharges occurred at the Sierra Lumber
3 Facility on the following dates: November 19, 2013; December 6, 2013; February 26, 2014; and
4 April 25, 2014.

5 86. On information and belief, CSPA alleges that Sierra Lumber failed to conduct
6 monthly visual observations of storm water discharges during numerous months during the past five
7 years. On information and belief, based on precipitation data compared to the dates in which Sierra
8 Lumber did conduct monthly visual observation of storm water discharges at the Sierra Lumber
9 Facility, CSPA alleges that Sierra Lumber failed to conduct monthly visual observations of storm
10 water discharges at Outfall 1 during the following months: November 2013, December 2013,
11 February 2014, and April 2014.

12 87. On information and belief, CSPA alleges that zinc is a pollutant likely to be present in
13 Sierra Lumber's storm water discharges in significant quantities. Sierra Lumber monitored its storm
14 water discharges for zinc through the 2009-2010 wet season. The concentrations of zinc regularly
15 observed were well in excess of the applicable water quality standards, benchmark value, and annual
16 NAL for zinc. CSPA alleges that Sierra Lumber has not implemented any BMPs to reduce these
17 zinc concentrations. On information and belief, CSPA alleges that Sierra Lumber has failed to
18 analyze any of its storm water discharges from the past five years for zinc.

19 88. On information and belief, CSPA alleges that Sierra Lumber has consistently failed to
20 comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit, by failing to
21 complete a proper ACSCE Report as well as an Annual Evaluation for the Sierra Lumber Facility.

22 89. On information and belief, Plaintiff alleges that since at least June 4, 2011, Sierra
23 Lumber has failed to implement BAT and BCT at the Sierra Lumber Facility for their discharges of
24 pH, TSS, COD and other potentially un-monitored pollutants. Effluent Limitation B(3) of the 1997
25 Permit and Effluent Limitation V(A) of the 2015 Permit requires that Sierra Lumber implement
26 BAT for toxic and nonconventional pollutants and BCT for conventional pollutants by no later than
27 October 1, 1992. As of the date of this Complaint, Sierra Lumber has failed to implement BAT and
28

1 BCT.

2 90. On information and belief, Plaintiff alleges that since at least June 4, 2011, Sierra
3 Lumber has failed to implement an adequate SWPPP for the Sierra Lumber Facility. Plaintiff is
4 informed and believes, and thereupon alleges, that the SWPPP prepared for the Sierra Lumber
5 Facility does not set forth site-specific best management practices for the Sierra Lumber Facility that
6 are consistent with BAT or BCT for the Sierra Lumber Facility. Plaintiff is informed and believes,
7 and thereupon alleges, that the SWPPP prepared for the Sierra Lumber Facility does not comply with
8 the requirements of Section X(H)(2) of the 2015 Permit. The SWPPP also fails to identify and
9 implement advanced BMPs that are not being implemented at the Sierra Lumber Facility because
10 they do not reflect best industry practice considering BAT/BCT. According to information available
11 to CSPA, Sierra Lumber's SWPPP has not been evaluated to ensure its effectiveness and revised
12 where necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and
13 thereupon alleges, that the SWPPP does not include each of the mandatory elements required by the
14 General Permit.

15 91. Information available to CSPA indicates that as a result of these practices, storm
16 water containing excessive pollutants is being discharged during rain events to the City of
17 Stockton's MS4, which discharges to Mormon Slough, which flows into the DWSC and then into
18 the San Joaquin River.

19 92. Plaintiff is informed and believes, and thereupon alleges, that Sierra Lumber has failed
20 and continues to fail to alter the Sierra Lumber Facility's SWPPP and site-specific BMPs consistent
21 with the General Permit.

22 93. Information available to Plaintiff indicates that Sierra Lumber has not fulfilled the
23 requirements set forth in the General Permit for discharges from the Sierra Lumber Facility due to
24 the continued discharge of contaminated storm water. Plaintiff is informed and believes, and
25 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

26 ///

VI. **CLAIMS FOR RELIEF**

FIRST CAUSE OF ACTION

**Failure to Implement the Best Available and
Best Conventional Treatment Technologies
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

94. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

95. The General Permit's SWPPP requirements and Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. Defendant Masonite and Defendant Sierra Lumber have failed to implement BAT and BCT at the Masonite Facility and Sierra Lumber Facility, respectively, for their discharges of pH, iron, TSS, O&G, COD, zinc, and other potentially un-monitored pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

96. Each day since June 4, 2011, that Defendant Masonite and Defendant Sierra Lumber have failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

97. Defendant Masonite and Defendant Sierra Lumber have been in violation of the BAT/BCT requirements every day since June 4, 2011. Defendant Masonite and Defendant Sierra Lumber continue to be in violation of the BAT/BCT requirements each day that they fail to develop and fully implement BAT/BCT at the Masonite Facility and Sierra Lumber Facility.

SECOND CAUSE OF ACTION

**Discharges of Contaminated Storm Water
in Violation of Permit Conditions and the Act
(Violations of 33 U.S.C. §§ 1311, 1342)**

98. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

99. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of

1 the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that
2 cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1)
3 of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water
4 discharges to any surface or ground water that adversely impact human health or the environment.
5 Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and
6 Discharge Prohibition III(D) of the 2015 Permit prohibit storm water discharges that cause or
7 contribute to an exceedance of any applicable water quality standards contained in Statewide Water
8 Quality Control Plan or the applicable Regional Board's Basin Plan.

9 100. Plaintiff is informed and believes, and thereupon alleges, that since at least June 4,
10 2011, Defendant Masonite and Defendant Sierra Lumber have been discharging polluted storm water
11 from the Masonite Facility and Sierra Lumber Facility, respectively, in excess of applicable water
12 quality standards in violation of Receiving Water Limitation C(2) of the 1997 Permit and Receiving
13 Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit.

14 101. During every rain event, storm water flows freely over exposed materials, paved
15 surfaces, equipment, and other accumulated pollutants at the Masonite Facility and Sierra Lumber
16 Facility, becoming contaminated with pH, iron, zinc, sediment, and other potentially un-monitored
17 pollutants at levels above applicable water quality standards. The storm water then flows untreated to
18 the City of Stockton's MS4, which discharges to Mormon Slough, which flows into the DWSC and
19 then into the San Joaquin River.

20 102. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
21 contaminated storm water are causing or contributing to the violation of the applicable water quality
22 standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's Basin
23 Plan in violation of Receiving Water Limitation C(2) of the General Permit.

24 103. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
25 contaminated storm water are adversely affecting human health and the environment in violation of
26 Receiving Water Limitation C(1) of the General Permit.

27 104. Every day since at least June 4, 2011, that Defendant Masonite and Defendant Sierra
28

1 Lumber have discharged and continue to discharge polluted storm water from the Masonite Facility
2 and Sierra Lumber Facility, respectively, in violation of the General Permit is a separate and distinct
3 violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and
4 continuous.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Prepare, Implement, Review, and Update**
7 **an Adequate Storm Water Pollution Prevention Plan**
8 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

9 105. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set
10 forth herein.

11 106. The General Permit requires dischargers of storm water associated with industrial
12 activity to develop and implement an adequate SWPPP no later than October 1, 1992.

13 107. Defendant Masonite and Defendant Sierra Lumber have failed to develop and
14 implement an adequate SWPPP for the Masonite Facility and Sierra Lumber Facility, respectively.
15 Defendant Masonite's and Defendant Sierra Lumber's ongoing failure to develop and implement an
16 adequate SWPPP for the Masonite Facility and Sierra Lumber Facility, respectively is evidenced by,
17 *inter alia*, Defendant Masonite and Defendant Sierra Lumber's failures to justify each minimum and
18 advanced BMP not being implemented.

19 108. Defendant Masonite and Defendant Sierra Lumber have failed to update the Masonite
20 Facility's SWPPP and the Sierra Lumber Facility's SWPPP in response to the analytical results of the
21 Facility's storm water monitoring.

22 109. Each day since June 4, 2011, that Defendant Masonite and Defendant Sierra Lumber
23 have failed to develop, implement and update an adequate SWPPP for the Masonite Facility and Sierra
24 Lumber Facility, respectively, is a separate and distinct violation of the General Permit and Section
25 301(a) of the Act, 33 U.S.C. § 1311(a).

26 110. Defendant Masonite and Defendant Sierra Lumber have been in violation of the
27 SWPPP requirements every day since June 4, 2011. Defendant Masonite and Defendant Sierra
28 Lumber continue to be in violation of the SWPPP requirements each day that they fail to develop and

1 fully implement an adequate SWPPP for the Masonite Facility and Sierra Lumber Facility,
2 respectively.

3 **FOURTH CAUSE OF ACTION**
4 **Failure to Develop and Implement an**
5 **Adequate Monitoring and Reporting Program**
6 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 111. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set
8 forth herein.

9 112. The General Permit requires dischargers of storm water associated with industrial
10 activity to have developed and be implementing a monitoring and reporting program (including,
11 *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

12 113. Defendant Masonite and Defendant Sierra Lumber have failed to develop and
13 implement an adequate monitoring and reporting program for the Masonite Facility and Sierra
14 Lumber Facility, respectively.

15 114. Defendant Masonite's and Defendant Sierra Lumber's ongoing failure to develop and
16 implement an adequate monitoring and reporting program are evidenced by, *inter alia*, Defendant
17 Masonite's failure to conduct proper monthly visual observations at the Masonite Facility, sample
18 storm water discharges from all of the Masonite Facility's outfalls, and analyze all of its storm water
19 discharges for iron; as well as Defendant Sierra Lumber's failure to conduct proper monthly visual
20 observations at the Sierra Lumber Facility as well as its failure to analyze all of its storm water
21 discharges for zinc.

22 115. Each day since June 4, 2011, that Defendant Masonite and Defendant Sierra Lumber
23 have failed to develop and implement an adequate monitoring and reporting program for the
24 Masonite Facility and Sierra Lumber Facility, respectively, in violation of the General Permit is a
25 separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. §
26 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous
27 violations of the Act.
28

VII. RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- a. Declare Defendant Masonite to have violated and to be in violation of the Act as alleged herein;
- b. Declare Defendant Sierra Lumber to have violated and to be in violation of the Act as alleged herein;
- c. Enjoin Defendant Masonite from discharging polluted storm water from the Masonite Facility unless authorized by the 2015 Permit;
- d. Enjoin Defendant Sierra Lumber from discharging polluted storm water from the Sierra Lumber Facility unless authorized by the 2015 Permit;
- e. Enjoin Defendant Masonite and Defendant Sierra Lumber from further violating the substantive and procedural requirements of the 2015 Permit;
- f. Order Defendant Masonite and Defendant Sierra Lumber to immediately implement storm water pollution control and treatment technologies and measures that are equivalent to BAT or BCT at their respective facilities;
- g. Order Defendant Masonite and Defendant Sierra Lumber to immediately implement storm water pollution control and treatment technologies and measures at their respective facilities that prevent pollutants in the Masonite Facility's and Sierra Lumber Facility's storm water from contributing to violations of any water quality standards;
- h. Order Defendant Masonite and Defendant Sierra Lumber to comply with the Permit's monitoring and reporting requirements, including ordering supplemental monitoring to compensate for past monitoring violations;
- i. Order Defendant Masonite and Defendant Sierra Lumber to prepare SWPPPs consistent with the Permit's requirements and implement procedures to regularly review and update the SWPPPs;
- j. Order Defendant Masonite and Defendant Sierra Lumber to provide Plaintiff with reports documenting the quality and quantity of their discharges to waters of the United States and

1 their efforts to comply with the Act and the Court's orders;

2 k. Order Defendant Masonite and Defendant Sierra Lumber to pay civil penalties of
3 up to \$37,500 per day per violation for each violation of the Act since July 14, 2011 pursuant to
4 Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

5 l. Order Defendant Masonite and Defendant Sierra Lumber to take appropriate
6 actions to restore the quality of waters impaired or adversely affected by their activities;

7 m. Award Plaintiff's costs (including reasonable investigative, attorney, witness,
8 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and.

9 n. Award any such other and further relief as this Court may deem appropriate.
10

11 Dated: August 3, 2016

Respectfully submitted,

12
13 By: /s/ Douglas J. Chermak
14 Douglas J. Chermak
15 LOZEAU DRURY LLP
16 Attorneys for California Sportfishing Protection
17 Alliance
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27
28

EXHIBIT A



T 916.836.4200
F 916.836.4205

410 12th Street, Suite 250
Oakland, Ca 94612

www.lozeaudrury.com
diana@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 23, 2016

Pablo Diaz, Plant Manager
Mark Valadez, Regional EHS Manager
Masonite Corporation
433 W. Scotts Ave.
Stockton, CA 95203

Frederick J. Lynch, President and CEO
Masonite
One Tampa City Center
201 North Franklin Street
Suite 300
Tampa, Florida 33602

VIA FIRST CLASS MAIL

Corporate Creations Network, Inc.,
Registered Agent for Masonite Corporation
(Entity Number C0150300)
1430 Truxtun Ave., 5th Floor
Bakersfield, CA 93301

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Messrs. Diaz, Valadez, and Lynch:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Masonite Corporation's industrial facility located at 433 W. Scotts Avenue in Stockton, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin

Notice of Violations and Intent to File Suit

River, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to Masonite Corporation, Pablo Diaz, Mark Valadez, and Frederick Lynch as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Masonite").

This letter addresses Masonite's unlawful discharge of pollutants from the Facility into channels that flow into the San Joaquin River and the Sacramento-San Joaquin River Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S39I013771. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Masonite on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Masonite under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Masonite certifies that the Facility is classified under SIC code 2431. The Facility collects and discharges storm water from its 350,399 square-foot industrial site through at least four outfalls. On information and belief, CSPA alleges the outfall contains storm water that is commingled with runoff from the Facility from the reported 163,093 square-feet of where industrial processes occur. The outfall discharges to channels that flow into the City of Stockton's Municipal Separate Storm Sewer System ("MS4"), which discharges to Mormon Slough, which flows into the Stockton Deep Water Ship Channel ("DWSC") and then into the San Joaquin River, all of which also comprise portions of the Sacramento-San Joaquin Delta ("Delta").

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the San Joaquin River and its tributaries and the Delta in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan and the "Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary." *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf; http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/2006wqcp/docs/2006_plan_final.pdf. The beneficial uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including cloudy or muddy water from industrial areas, impairs people's use of the San Joaquin River and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and the Sacramento-San Joaquin Delta. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at III-9.00.

Table III-I of the Basin Plan provides a water quality objective ("WQO") for iron of 0.3 mg/L.

The DWSC and the San Joaquin River are impaired for dissolved oxygen.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology

economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).¹ The following benchmarks have been established for pollutants discharged by Masonite: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; iron – 1.0 mg/L; and chemical oxygen demand – 120 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; iron – 1.0 mg/L; and COD – 120 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Masonite has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation

¹ The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Masonite has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, iron, O&G, and COD in violation of the General Permit. Masonite's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration/ Conditions	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
3/11/2016	pH	8.52	6.5 – 8.5	Outfall 1 (Scotts Ave)
11/24/2015	pH	8.86	6.5 – 8.5	Outfall 3B (340 Scotts)
11/2/2015	pH	8.61	6.5 – 8.5	Outfall 1 (Scotts Ave)
11/2/2015	pH	9.27	6.5 – 8.5	Outfall 3B (340 Scotts)
2/29/2012	pH	6.2	6.5 – 8.5	SS-1
3/11/2016	Iron	22 mg/L	0.3 mg/L (WQO)	Outfall 3B (Scotts/Monroe)
11/24/2015	Iron	180 mg/L	0.3 mg/L (WQO)	Outfall 3B (340 Scotts)
11/2/2015	Iron	18 mg/L	0.3 mg/L (WQO)	Outfall 3B (340 Scotts)
4/7/2015	Narrative	Heavy sediment and bio sheen, particulate matter	Basin Plan at III-7.00 / Basin Plan at III-6.00	Outfall 1
3/11/2015	Narrative	Sediment and bio sheen	Basin Plan at III-7.00 / Basin Plan at III-6.00	Outfall 1
12/11/2014	Narrative	Brown, turbid	Basin Plan at III-5.00 / Basin Plan at III-9.00	Outfall 1
11/20/2014	Narrative	Turbid, light brown	Basin Plan at III-5.00 / Basin Plan at III-9.00	Outfall 1

10/31/2014	Narrative	Floating wood particulates, sheen, dark/black sediment	Basin Plan at III-5.00 / Basin Plan at III-7.00 / Basin Plan at III-6.00	Outfall 1
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The information in the above table reflects data gathered from Masonite's self-monitoring during the 2011-2012 and 2014-2015 wet seasons, as well as the 2015-2016 reporting year. CSPA alleges that since at least February 29, 2012, and continuing through today, Masonite has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5
- Iron – 0.3 mg/L (WQO)
- Discoloration – water shall be free of discoloration that causes nuisance or adversely affects beneficial uses. Basin Plan at III-5.00.
- Turbidity – waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Basin Plan at III-9.00.
- Floating materials – water shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses. Basin Plan at III-5.00.
- Sheen – waters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses. Basin Plan at III-6.00.
- Suspended materials – waters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses. Basin Plan at III-7.00.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
11/2/2015	pH	9.27	6.0 – 9.0	Outfall 3B (340 Scotts)
11/2/2015	Oil & Grease	29 mg/L	15 mg/L	Outfall 1 (Scotts Ave)
3/11/2016	Total Suspended Solids	113 mg/L	100 mg/L	Outfall 1 (Scotts Ave)
3/11/2016	Total Suspended Solids	572 mg/L	100 mg/L	Outfall 2 (Van Buren)
3/11/2016	Total Suspended Solids	570 mg/L	100 mg/L	Outfall 3B (Scotts/Monroe)

11/24/2015	Total Suspended Solids	107 mg/L	100 mg/L	Outfall 1 (Scotts Ave)
11/24/2015	Total Suspended Solids	462 mg/L	100 mg/L	Outfall 2 (733 S. Van Bu)
11/24/2015	Total Suspended Solids	433 mg/L	100 mg/L	Outfall 3A (340 Scotts)
11/24/2015	Total Suspended Solids	7,430 mg/L	100 mg/L	Outfall 3B (340 Scotts)
11/2/2015	Total Suspended Solids	319 mg/L	100 mg/L	Outfall 1 (Scotts Ave)
11/2/2015	Total Suspended Solids	447 mg/L	100 mg/L	Outfall 3B (340 Scotts)
11/20/2014	Total Suspended Solids	123 mg/L	100 mg/L	Outfall 1 (Scotts Ave)
10/31/2014	Total Suspended Solids	106 mg/L	100 mg/L	Outfall 1 (Scotts Ave)
10/22/2012	Total Suspended Solids	130 mg/L	100 mg/L	SS-1
3/11/2016	Iron	22 mg/L	1 mg/L	Outfall 3B (Scotts/Monroe)
11/24/2015	Iron	180 mg/L	1 mg/L	Outfall 3B (340 Scotts)
11/2/2015	Iron	18 mg/L	1 mg/L	Outfall 3B (340 Scotts)
4/22/2016	Chemical Oxygen Demand	140 mg/L	120 mg/L	Outfall 1 (Scotts Ave)
4/22/2016	Chemical Oxygen Demand	170 mg/L	120 mg/L	Outfall 2 (Van Buren)
4/22/2016	Chemical Oxygen Demand	160 mg/L	120 mg/L	Outfall 3A (Scotts/Monroe)
3/11/2016	Chemical Oxygen Demand	130 mg/L	120 mg/L	Outfall 1 (Scotts Ave)
3/11/2016	Chemical Oxygen Demand	260 mg/L	120 mg/L	Outfall 2 (Van Buren)
3/11/2016	Chemical Oxygen Demand	140 mg/L	120 mg/L	Outfall 3A (Scotts/Monroe)
3/11/2016	Chemical Oxygen Demand	130 mg/L	120 mg/L	Outfall 3B (Scotts/Monroe)
11/24/2015	Chemical Oxygen Demand	260 mg/L	120 mg/L	Outfall 1 (Scotts Ave)
11/24/2015	Chemical Oxygen Demand	180 mg/L	120 mg/L	Outfall 2 (733 S. Van Bu)
11/24/2015	Chemical Oxygen Demand	140 mg/L	120 mg/L	Outfall 3A (340 Scotts)
11/24/2015	Chemical Oxygen Demand	1,600 mg/L	120 mg/L	Outfall 3B (340 Scotts)
11/2/2015	Chemical Oxygen Demand	160 mg/L	120 mg/L	Outfall 1 (Scotts Ave)
11/2/2015	Chemical Oxygen Demand	160 mg/L	120 mg/L	Outfall 2 (733 S. Van Bu)

The information in the above table reflects data gathered from Masonite's self-monitoring during the 2012-2013 and 2014-2015 wet seasons and the 2015-2016 reporting year. Further, CSPA notes that the Facility has already exceeded the instantaneous maximum NAL for TSS during the 2015-2016 reporting year. CSPA alleges that since at least October 22, 2012, Masonite has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, O&G, iron, and COD.

CSPA's investigation, including its review of Masonite's Storm Water Pollution Prevention Plan ("SWPPP"), Masonite's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Masonite has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, O&G, iron, COD, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Masonite was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Masonite is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since May 23, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Masonite has discharged storm water containing impermissible and unauthorized levels of pH, TSS, O&G, iron, and COD in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.²

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, O&G, iron, COD, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act since May 23, 2011.

² The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Stockton, approximately 4.2 miles from the Facility. The data was accessed via <http://169.237.140.1/calludt.cgi/WXDESCRIPTION?MAP=&STN=STOCKTON.C> (Last accessed on May 23, 2016).

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. See 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. See 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. See 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." See 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

In its current SWPPP, Masonite indicates that the Facility has four storm water discharge outfalls. However, during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, the Facility only collected and analyzed storm water discharges from one outfall at the Facility, and failed to collect and analyze discharges from all of its other outfalls. This results in at least six violations of the General Permit for each year.

On information and belief, CSPA alleges that during the 2013-2014 wet season, Masonite failed to collect and analyze storm water samples from a second storm event. Despite its claims that there was only one event that produced storm water discharges during that season, CSPA alleges that precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during each of those wet seasons. Specifically, CSPA alleges that discharges occurred on the following dates:

- November 19, 2013
- December 6, 2013
- February 26, 2014
- April 25, 2014

This results in at least one violation of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least May 23, 2011.

ii. Failure to Conduct Visual Observations of Storm Water Discharges

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CSPA alleges that Masonite failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, CSPA alleges that Masonite failed to conduct monthly visual observations of storm water discharges at Outfall 1 during the following months:

- 2013 – November, December
- 2014 – February, April

In addition, during the past five years, Masonite has not performed any required monthly visual observations at any of its outfalls besides Outfall 1. This results in at least 24 violations of the General Permit for each year. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions

brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 23, 2011.

iii. Failure to Analyze for Pollutants That May Be Present in Significant Quantities

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

Thus far during the 2015-2106, reporting year, Masonite analyzed three of its storm water discharges for iron and found that the concentrations of iron were significantly in excess of the average NAL for iron.

Thus, iron is a pollutant likely to be present in Masonite's storm water discharges in significant quantities. On information and belief, CSPA alleges that Masonite has never otherwise analyzed its storm water discharges for iron. This failure to analyze iron in each sampling event results in at least 16 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Masonite is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 23, 2011.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). (Section B(14)). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CSPA indicates that Masonite has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report

to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Masonite has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CSPA puts Masonite on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Masonite is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Masonite is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve

as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Masonite has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. The SWPPP fails to implement and maintain minimum BMPs to minimize or prevent material tracking from the Facility.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Masonite has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CSPA puts Masonite on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Masonite is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

III. Persons Responsible for the Violations.

CSPA puts Masonite Corporation, Pablo Diaz, Mark Valadez, and Frederick Lynch on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Masonite Corporation, Pablo Diaz, Mark Valadez, and Frederick Lynch on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067
deltakeep@me.com

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
doug@lozeaudrury.com
michael@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Masonite to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Masonite and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Douglas J. Chermak
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

SERVICE LIST – via certified mail

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A**Rain Dates, Masonite Corporation, Stockton, CA**

5/28/2011	1/5/2013	12/19/2014
10/5/2011	1/6/2013	2/6/2015
11/19/2011	1/24/2013	2/7/2015
11/20/2011	2/19/2013	2/8/2015
1/20/2012	3/19/2013	3/2/2015
1/21/2012	3/30/2013	3/11/2015
1/22/2012	3/31/2013	3/23/2015
1/23/2012	4/4/2013	3/24/2015
2/7/2012	4/7/2013	3/25/2015
2/13/2012	9/2/2013	4/4/2015
2/29/2012	9/21/2013	4/11/2015
3/13/2012	11/19/2013	4/19/2015
3/14/2012	11/20/2013	4/20/2015
3/16/2012	12/6/2013	4/28/2015
3/17/2012	2/2/2014	10/25/2015
3/25/2012	2/6/2014	10/26/2015
3/27/2012	2/7/2014	11/8/2015
3/28/2012	2/8/2014	11/10/2015
3/31/2012	2/9/2014	11/11/2015
4/11/2012	2/26/2014	11/13/2015
4/12/2012	2/28/2014	11/17/2015
4/13/2012	3/3/2014	11/20/2015
4/25/2012	3/5/2014	11/23/2015
4/26/2012	3/26/2014	11/24/2015
10/22/2012	3/29/2014	11/26/2015
11/1/2012	3/31/2014	11/30/2015
11/9/2012	4/1/2014	12/8/2015
11/16/2012	4/25/2014	12/12/2015
11/17/2012	9/25/2014	12/17/2015
11/18/2012	10/31/2014	12/19/2015
11/21/2012	11/13/2014	12/21/2015
11/28/2012	11/19/2014	12/22/2015
11/30/2012	11/20/2014	12/23/2015
12/1/2012	11/22/2014	12/28/2015
12/2/2012	11/26/2014	12/29/2015
12/5/2012	11/29/2014	12/30/2015
12/15/2012	11/30/2014	12/31/2015
12/17/2012	12/2/2014	1/2/2016
12/21/2012	12/11/2014	1/3/2016
12/22/2012	12/12/2014	1/4/2016
12/23/2012	12/15/2014	1/5/2016
12/25/2012	12/16/2014	1/16/2016

Notice of Violations and Intent to File Suit

ATTACHMENT A

Rain Dates, Masonite Corporation, Stockton, California

1/18/2016	2/12/2016	3/8/2016
1/19/2016	2/13/2016	3/10/2016
1/21/2016	2/15/2016	3/11/2016
1/22/2016	2/16/2016	3/12/2016
1/23/2016	2/17/2016	3/13/2016
1/24/2016	2/18/2016	3/17/2016
1/25/2016	2/19/2016	3/23/2016
1/27/2016	2/20/2016	3/24/2016
1/28/2016	2/21/2016	3/25/2016
1/30/2016	2/23/2016	4/4/2016
2/3/2016	2/28/2016	4/11/2016
2/4/2016	2/29/2016	4/19/2016
2/7/2016	3/2/2016	4/20/2016
2/8/2016	3/3/2016	4/28/2016
2/9/2016	3/5/2016	
2/11/2016	3/6/2016	

EXHIBIT B



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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 23, 2016

Richard Wilson, Operations Manager
Russ Tharp, Plant Manager
Sierra Lumber Manufacturers
375 Hazelton Ave.
Stockton, CA 95203

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Messrs. Wilson and Tharp:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Sierra Lumber Manufacturers' industrial facility located at 375 Hazelton Avenue in Stockton, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin River, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to Sierra Lumber Manufacturers, Richard Wilson, and Russ Tharp as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Sierra Lumber").

This letter addresses Sierra Lumber's unlawful discharge of pollutants from the Facility into channels that flow into the San Joaquin River and the Sacramento-San Joaquin River Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S39I013771. The

Notice of Violations and Intent to File Suit

Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Sierra Lumber on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Sierra Lumber under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit (“NOI”), Sierra Lumber certifies that the Facility is classified under SIC code 2431. The Facility collects and discharges storm water from its 7.6 acre industrial site through at least four outfalls. On information and belief, CSPA alleges the outfalls contain storm water that is commingled with runoff from the Facility from the reported 5.5 acres of where industrial processes occur. The outfall discharges to channels that flow into the City of Stockton’s Municipal Separate Storm Sewer System (“MS4”), which discharges to Mormon Slough, which flows into the Stockton Deep Water Ship Channel (“DWSC”) and then into the San Joaquin River, all of which also comprise portions of the Sacramento-San Joaquin Delta (“Delta”).

The Regional Board has identified beneficial uses of the Central Valley Region’s waters and established water quality standards for the San Joaquin River and its tributaries and the Delta in “The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin,” generally referred to as the Basin Plan, and the “Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.” *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf; http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/2006wqcp/docs/2006_plan_final.pdf. The beneficial uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at II-1.00 – II-2.00. Visible pollution, including cloudy or muddy water from industrial

areas, impairs people's use of the San Joaquin River and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and the Sacramento-San Joaquin Delta. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at III-9.00.

Table III-1 of the Basin Plan provides a water quality objective ("WQO") for zinc of 0.1 mg/L. The California Toxics Rule (California Enclosed Bays & Estuaries) sets a freshwater numeric water quality standard for zinc of 0.12 mg/L (Criteria Maximum Concentration – "CMC") at a hardness of 100 mg/L CaCO_3 .

The DWSC and the San Joaquin River are impaired for dissolved oxygen.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").¹ The following benchmarks have been established for pollutants discharged by Sierra Lumber: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; zinc – 0.26 mg/L; and chemical oxygen demand – 120 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; zinc – 0.26 mg/L; and COD – 120 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

¹ The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Sierra Lumber has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Sierra Lumber has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, and COD in violation of the General Permit. Sierra Lumber's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration/ Conditions	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
3/11/2016	pH	8.78	6.5 – 8.5	Outfall 1B
11/24/2015	pH	9.03	6.5 – 8.5	Outfall 2 (North Drainage)
10/22/2012	pH	8.68	6.5 – 8.5	SS-3
11/11/2011	pH	6.23	6.5 – 8.5	SS-1
11/11/2011	pH	6.16	6.5 – 8.5	SS-3
3/11/2015	Narrative	Brown color; Turbid	Basin Plan at III-5.00 / Basin Plan at III-9.00	Outfall 2
12/11/2014	Narrative	Brown; Turbid	Basin Plan at III-5.00 / Basin Plan at III-9.00	Outfall 2
11/20/2014	Narrative	Turbid	Basin Plan at III-9.00	Outfall 1A
11/20/2014	Narrative	Brown color; Turbid	Basin Plan at III-5.00 / Basin Plan at III-9.00	Outfall 2
10/31/2014	Narrative	Dark brown color; Turbid	Basin Plan at III-5.00 / Basin Plan at III-9.00	Outfall 2
10/31/2014	Narrative	Dark brown color; Turbid	Basin Plan at III-5.00 / Basin Plan at III-9.00	Outfall 1A
10/31/2014	Narrative	Light yellow color	Basin Plan at III-5.00	Outfall 1B
3/26/2014	Narrative	Cloudy	Basin Plan at III-7.00	Outfall 2

The information in the above table reflects data gathered from Sierra Lumber's self-monitoring during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, as well as the 2015-2016 reporting year. CSPA alleges that since at least November 11, 2011, and continuing through today, Sierra Lumber has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5
- Discoloration – water shall be free of discoloration that causes nuisance or adversely affects beneficial uses. Basin Plan at III-5.00.
- Turbidity – waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Basin Plan at III-9.00.

- Floating materials – water shall not contain floating material in amounts that
- Suspended materials – waters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses. Basin Plan at III-7.00.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
11/2/2015	pH	9.03	6.0 – 9.0	Outfall 2 (North Drainage)
3/11/2016	Total Suspended Solids	356 mg/L	100 mg/L	Outfall 2
3/4/2016	Total Suspended Solids	167 mg/L	100 mg/L	Outfall 1A
12/3/2015	Total Suspended Solids	1940 mg/L	100 mg/L	Outfall 2 (North Drainage)
11/24/2015	Total Suspended Solids	164 mg/L	100 mg/L	Outfall 1A (South Drainage)
11/24/2015	Total Suspended Solids	391 mg/L	100 mg/L	Outfall 2 (North Drainage)
11/2/2015	Total Suspended Solids	122 mg/L	100 mg/L	Outfall 1A (South Drainage)
10/31/2014	Total Suspended Solids	155 mg/L	100 mg/L	Outfall 1B (Central Drainage)
10/31/2014	Total Suspended Solids	459 mg/L	100 mg/L	Outfall 2 (North Drainage)
3/26/2014	Total Suspended Solids	112 mg/L	100 mg/L	Outfall 2 (North Drainage)
11/28/2012	Total Suspended Solids	160 mg/L	100 mg/L	SS-1
11/28/2012	Total Suspended Solids	580 mg/L	100 mg/L	SS-3
3/11/2016	Chemical Oxygen Demand	170 mg/L	120 mg/L	Outfall 2
3/4/2016	Chemical Oxygen Demand	220 mg/L	120 mg/L	Outfall 1A
12/3/2015	Chemical Oxygen Demand	180 mg/L	120 mg/L	Outfall 2 (North Drainage)

11/24/2015	Chemical Oxygen Demand	130 mg/L	120 mg/L	Outfall 1A (South Drainage)
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The information in the above table reflects data gathered from Sierra Lumber's self-monitoring during the 2012-2013, 2013-2014, and 2014-2015 wet seasons and the 2015-2016 reporting year. CSPA alleges that since at least November 28, 2012, Sierra Lumber has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, and COD.

CSPA's investigation, including its review of Sierra Lumber's Storm Water Pollution Prevention Plan ("SWPPP"), Sierra Lumber's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Sierra Lumber has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, COD, and potentially other pollutants, including zinc, in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Sierra Lumber was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Sierra Lumber is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since May 23, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Sierra Lumber has discharged storm water containing impermissible and unauthorized levels of pH, TSS, and COD in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.²

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, COD, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each

² The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Stockton, approximately 4.2 miles from the Facility. The data was accessed via <http://169.237.140.1/calludt.cgi/WXDESCRIPTION?MAP=&STN=STOCKTON.C> (Last accessed on May 23, 2016).

day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act since May 23, 2011.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. See 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. See 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. See 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." See 1997 Permit, § B(5)(a). The Facility has violated these monitoring requirements.

On information and belief, CSPA alleges that during the 2013-2014 wet season, Sierra Lumber failed to collect and analyze storm water samples from a second storm event. Despite its

claims that there was only one event that produced storm water discharges during that season, CSPA alleges that precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during each of those wet seasons. Specifically, CSPA alleges that discharges occurred on the following dates:

- November 19, 2013
- December 6, 2013
- February 26, 2014
- April 25, 2014

This results in at least four violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least November 19, 2013.

ii. Failure to Conduct Visual Observations of Storm Water Discharges

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CSPA alleges that Sierra Lumber failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, CSPA alleges that Sierra Lumber failed to conduct monthly visual observations of storm water discharges at its three discharge locations during the following months:

- 2013 – November, December
- 2014 – February, April

This results in at least 12 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least November 30, 2013.

iii. Failure to Analyze for Pollutants That May Be Present in Significant Quantities

Under the 1997 Permit, facilities must analyze storm water samples for “toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for “[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment.” 2015 Permit, Section XI(B)(6)(c).

On information and belief, CSPA alleges that zinc is likely to be present in significant quantities from industrial storm water discharges from the Facility. Sierra Lumber monitored its storm water discharges for zinc through the 2009-2010 wet season. The concentrations of zinc regularly observed were well in excess of the applicable water quality standards, benchmark value, and annual NAL for zinc. CSPA alleges that Sierra Lumber has not implemented any BMPs to reduce these zinc concentrations.

On information and belief, CSPA alleges that Sierra Lumber has failed to analyze any of its storm water discharges from the past five years for zinc. This failure to analyze zinc in each sampling event results in at least 29 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Sierra Lumber is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since May 23, 2011.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report (“ACSCE Report”). (Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation (“Annual Evaluation”) that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CSPA indicates that Sierra Lumber has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility’s ACSCE Reports provide an explanation of the Facility’s failure to take steps to reduce or prevent high levels of pollutants observed in the Facility’s storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). None of the ACSCE Reports address the discharges of COD or zinc. The

failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Sierra Lumber has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CSPA puts Sierra Lumber on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Sierra Lumber is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Sierra Lumber is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific

BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Sierra Lumber has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. The SWPPP fails to implement and maintain minimum BMPs to minimize or prevent material tracking from the Facility.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Sierra Lumber has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CSPA puts Sierra Lumber on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Sierra Lumber is subject to civil penalties for all violations of the CWA occurring since May 23, 2011.

III. Persons Responsible for the Violations.

CSPA puts Sierra Lumber Manufacturers, Richard Wilson, and Russ Tharp on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Sierra Lumber Manufacturers, Richard Wilson, and Russ Tharp on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067
deltakeep@me.com

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
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VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Sierra Lumber to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Sierra Lumber and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Douglas J. Chermak
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

SERVICE LIST – via certified mail

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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
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Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
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ATTACHMENT A**Rain Dates, Sierra Lumber Manufacturers, Stockton, CA**

5/28/2011	1/5/2013	12/19/2014
10/5/2011	1/6/2013	2/6/2015
11/19/2011	1/24/2013	2/7/2015
11/20/2011	2/19/2013	2/8/2015
1/20/2012	3/19/2013	3/2/2015
1/21/2012	3/30/2013	3/11/2015
1/22/2012	3/31/2013	3/23/2015
1/23/2012	4/4/2013	3/24/2015
2/7/2012	4/7/2013	3/25/2015
2/13/2012	9/2/2013	4/4/2015
2/29/2012	9/21/2013	4/11/2015
3/13/2012	11/19/2013	4/19/2015
3/14/2012	11/20/2013	4/20/2015
3/16/2012	12/6/2013	4/28/2015
3/17/2012	2/2/2014	10/25/2015
3/25/2012	2/6/2014	10/26/2015
3/27/2012	2/7/2014	11/8/2015
3/28/2012	2/8/2014	11/10/2015
3/31/2012	2/9/2014	11/11/2015
4/11/2012	2/26/2014	11/13/2015
4/12/2012	2/28/2014	11/17/2015
4/13/2012	3/3/2014	11/20/2015
4/25/2012	3/5/2014	11/23/2015
4/26/2012	3/26/2014	11/24/2015
10/22/2012	3/29/2014	11/26/2015
11/1/2012	3/31/2014	11/30/2015
11/9/2012	4/1/2014	12/8/2015
11/16/2012	4/25/2014	12/12/2015
11/17/2012	9/25/2014	12/17/2015
11/18/2012	10/31/2014	12/19/2015
11/21/2012	11/13/2014	12/21/2015
11/28/2012	11/19/2014	12/22/2015
11/30/2012	11/20/2014	12/23/2015
12/1/2012	11/22/2014	12/28/2015
12/2/2012	11/26/2014	12/29/2015
12/5/2012	11/29/2014	12/30/2015
12/15/2012	11/30/2014	12/31/2015
12/17/2012	12/2/2014	1/2/2016
12/21/2012	12/11/2014	1/3/2016
12/22/2012	12/12/2014	1/4/2016
12/23/2012	12/15/2014	1/5/2016
12/25/2012	12/16/2014	1/16/2016

Notice of Violations and Intent to File Suit

ATTACHMENT A

Rain Dates, Sierra Lumber Manufacturers, Stockton, California

1/18/2016	2/12/2016	3/8/2016
1/19/2016	2/13/2016	3/10/2016
1/21/2016	2/15/2016	3/11/2016
1/22/2016	2/16/2016	3/12/2016
1/23/2016	2/17/2016	3/13/2016
1/24/2016	2/18/2016	3/17/2016
1/25/2016	2/19/2016	3/23/2016
1/27/2016	2/20/2016	3/24/2016
1/28/2016	2/21/2016	3/25/2016
1/30/2016	2/23/2016	4/4/2016
2/3/2016	2/28/2016	4/11/2016
2/4/2016	2/29/2016	4/19/2016
2/7/2016	3/2/2016	4/20/2016
2/8/2016	3/3/2016	4/28/2016
2/9/2016	3/5/2016	
2/11/2016	3/6/2016	